

4-7-11 Department authority -- Examination and investigation of transactions -- Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist order -- Enforcement -- Review.

- (1) For the purpose of enforcing this chapter the department may, upon its own motion, or shall, upon the verified complaint of an interested consignor, investigate, examine, or inspect any transaction involving:
 - (a) the solicitation, receipt, sale, or attempted sale of livestock by a dealer or person assuming to act as a dealer;
 - (b) the failure to make a correct account of sales;
 - (c) the intentional making of a false statement about market conditions or the condition or quantity of livestock consigned;
 - (d) the failure to remit payment in a timely manner to the consignor as required by contract or by this chapter;
 - (e) any other consignment transaction alleged to have resulted in damage to the consignor; or
 - (f) any dealer or agent with an unsatisfied judgment by a civil court related to an activity for which licensing is required by this chapter.
- (2)
 - (a) After investigation upon its own motion, if the department determines that probable cause exists to believe that a dealer has engaged or is engaging in acts that violate this chapter, the department shall issue a notice of agency action.
 - (b)
 - (i) Upon the receipt of a verified complaint, the department shall undertake to effect a settlement between the consignor and the dealer.
 - (ii) If a settlement cannot be effected, the department shall treat the verified complaint as a request for agency action.
- (3)
 - (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer designated by the commissioner, determines by a preponderance of the evidence that the person complained of has violated this chapter and that the violation has resulted in damage to the complainant, the commissioner or officer shall:
 - (i) prepare written findings of fact detailing the findings and fixing the amount of damage suffered; and
 - (ii) order the defendant to pay damages.
 - (b) In a hearing initiated upon the department's own motion, if the commissioner or hearing officer determines by a preponderance of the evidence that the person complained of by the department has engaged in, or is engaging in, acts that violate this chapter, the commissioner or officer shall prepare written findings of fact and an order requiring the person to cease and desist from the activity.
- (4) The department may petition any court having jurisdiction in the county where the action complained of occurred to enforce the department's order.
- (5) Any dealer aggrieved by an order issued under this section may obtain judicial review of the order.
- (6)
 - (a) The department may not act upon a verified complaint submitted to the department more than six months after the consignor allegedly suffered damage.
 - (b) A livestock claim shall be made in writing within 120 days from the date of the transaction.

Amended by Chapter 383, 2011 General Session

